

REMARKS

No claims having been canceled or added, the Applicant contends that claims 13-19 remain pending and properly under consideration in this application.

Restriction Requirement

The Examiner has requested an election under 35 U.S.C. § 121 among various inventions identified in the originally filed claims of the application, the claim groups and inventions being identified as:

- | | |
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| Group I | Claims 13-17 and 19, drawn to a semiconductor device, classified in class 257, subclass 296; and |
| Group II | Claim 18, drawn to a method of making a semiconductor device, classified in class 438, subclass 253. |

Applicants' Election

In response to this Restriction Requirement, the Applicants elect, with traverse, the invention of claims 13-17 and 19 (the Group I claims) drawn to a semiconductor device.

Arguments in Support of Traverse

The Applicants submit that particular structure of a semiconductor device and the process used to form that device are so intimately related that, notwithstanding the separate classification of the device and the method of producing the device, a search for art relevant to one group of claims, *e.g.*, those directed to the device, will necessarily find art pertinent to the other invention,

e.g., those directed to the method. Accordingly, the Applicants contend that no serious burden would result from examining all of the pending claims in a single application.

The Applicants request, therefore, that the Restriction Requirement be reconsidered and withdrawn.

Species Election

The Examiner has also required election between two species identified as:

Species I as illustrated in FIGS. 2-7 (FIG. 7 reproduced below); and

Species II as illustrated in FIG. 8 (reproduced below).

Fig. 7

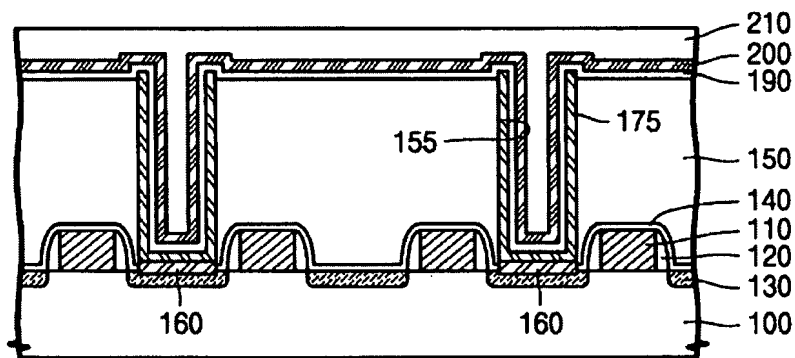
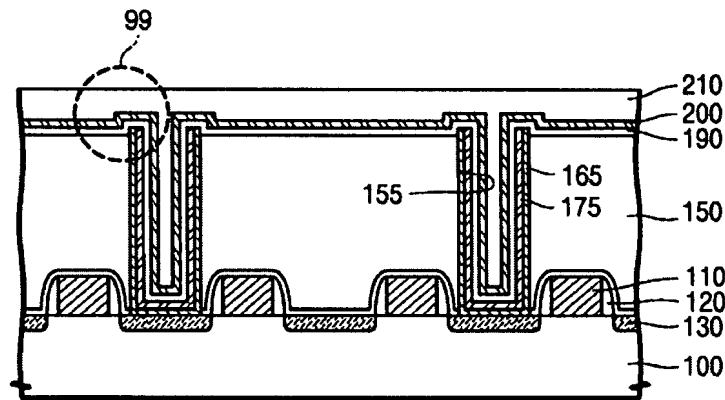


Fig. 8



Applicants' Species Election

In response to this Restriction Requirement, the Applicants elect, with traverse, the species illustrated in FIGS. 2-7 (the Species I FIGS.). The Applicants submit that each of the elected claims 13-17 and 19 is generic to the structures illustrated in the FIGS. segregated as Species I and Species II and are perplexed by the Examiner's contention, Action at 3, that there are no generic claims. The Applicants request, therefore, that the Examiner provide some explanation of the basis for the election requirement

Arguments in Support of Traverse

The Applicants note that, pursuant to the guidance provided in MPEP § 806.04(f), the claims to be restricted to different species must be mutually exclusive and provides that the general test as to when restriction to different species is proper claims are situation in which one

or more claims recites limitations that recited limitations found only in a first species but not in a second, while one or more other claims recite limitations found only in a second species. This requirement has been summarized as “claims to be restricted to different species must recite the mutually exclusive characteristics of such species.”

The Applicants also note that 37 C.F.R. § 1.141 provides, in pertinent part, “*more than one species of an invention, not to exceed a reasonable number*, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form or otherwise include all the limitations of the generic claim.” 37 C.F.R. § 1.141 (emphasis added).

The Applicants contend where, as in this instance, each of the claims is generic to all of the identified “species” and recite no “mutually exclusive characteristics,” requiring an election between only two species, a number that the Applicants contend must necessarily be encompassed by the limits “more than one” and “a reasonable number,” is unwarranted.

The Applicants request, therefore, that the Species Election requirement be reconsidered and withdrawn.

CONCLUSION

In view of the above elections, the Applicant submits that the present application in condition for allowance. A notice to that effect is respectfully requested.

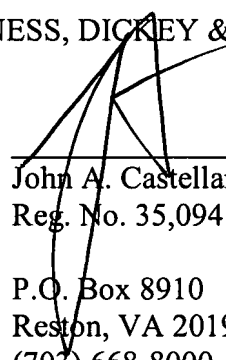
If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge any underpayment or non-payment of any fees required under 37 C.F.R. §§ 1.16 or 1.17, or credit any overpayment of such fees, to Deposit Account No. 08-0750, including, in particular, extension of time fees.

Respectfully submitted,

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By:



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